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SUPREME COURT  
STATE OF WASHINGTON  
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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

DAVID MOELLER,

Respondent,

v.

FARMERS INSURANCE  
COMPANY OF WASHINGTON  
and FARMERS INSURANCE  
EXCHANGE,

Petitioners.

No. 84500-0

PETITIONERS'  
STATEMENT OF  
ADDITIONAL  
AUTHORITIES

Pursuant to RAP 10.8, Petitioners Farmers Insurance Company of Washington and Farmers Insurance Exchange respectfully call the Court's attention to the United States Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277, 2011 U.S. LEXIS 4567 (June 20, 2011). The Court held that to meet the commonality requirement of *Fed. R. Civ. P. 23(a)(2)*, a party seeking class certification must show the existence of a "common contention" that "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue

that is central to the validity of each one of the claims in one stroke.”

*Id.*, slip op. at 9. The Court also held that plaintiffs’ regression analyses were insufficient to establish that plaintiffs’ theory of liability could be proved on a classwide basis, *id.*, slip op. at 16, and disapproved of the district court’s plan to allow a “Trial by Formula,” *id.*, slip op. at 27.


Petitioners also call this Court’s attention to a recent decision of the United States District Court for the Southern District of California denying certification under *Fed. R. Civ. P. 23(b)(3)* for a proposed class action against an insurer. *See Campion v. Old Republic Home Protection Co.*, No. 09-CV-748-JMA (NLS), 2011 U.S. Dist. LEXIS 1181 (S.D. Cal. Jan. 6, 2011). The home warranty insurance policies at issue contained a repair or replace obligation. Although the plaintiff and his expert conceded that the insurer “legitimately denies certain claims,” the plaintiff sought to represent a class of insureds alleging wrongful denial of their claims for insurance benefits. *Id.* at \*21-30. The district court denied certification of the plaintiff’s breach of contract claim, finding that determination of whether the insurance contracts had been breached

would require inquiry "on an individualized basis to determine whether claims that were denied were wrongfully denied...." *Id.* at \*27.

Both authorities are offered in connection with Petitioners' challenge to the trial court's certification of a Rule 23(b)(3) class.

DATED this 20<sup>th</sup> day of June, 2011.

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## CERTIFICATE OF SERVICE BY MAIL

I certify that on June 20, 2011, I caused copies of the foregoing

### PETITIONERS' STATEMENT OF ADDITIONAL

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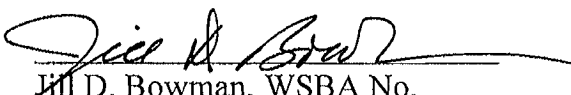
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